

**IN THE UNITED STATES DISTRICT COURT
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

Shoney's North America Corp.,)
)
)
) Case No. 3:10-cv-0894
Plaintiff,)
)
) Judge Trauger
v.)
)
Goldmine Hospitality, LLC,)
Southern Hospitality Services, LLC,)
Dipankar Ben Banerjee, Moushumi)
Banerjee, and Brian R. Rachal,)
)
Defendants.)

ENTRY OF DEFAULT IN PART

Pending is Plaintiff's Request for Entry of Default against Defendants Goldmine Hospitality, LLC, Southern Hospitality Services, LLC, Dipankar Ben Banerjee and Moushumi Banerjee (collectively "Defendants") (Docket Entry 30).

It appears that service has been made upon the Defendants and returns of service have been filed with the Court (Docket Entries 14-17). Defendants have not responded to the Complaint against them. However, the request for entry of default against Defendants Dipankar Ben Banerjee and Moushumi Banerjee must be denied. The request as to those Defendants is not supported with appropriate affidavits of military service as required by the Servicemembers Civil Relief Act of 2003 (50 App. U.S.C. 501 et seq.). The Act requires that affidavits be submitted that "state whether or not the Defendant is in military service and **showing facts necessary to support the affidavit**" (emphasis added). Plaintiff has submitted a Declaration (Docket Entry No. 31) in support of the Request for Entry of Default, however that declaration merely states "Upon information and belief,

Defendants are not minors, incompetent persons or in active military service.” The declaration does not show “facts necessary to support the affidavit.” Information on the military status of an individual can be obtained at the Department of Defense website at <https://www.dmdc.osd.mil/appj/scra/scraHome.do>. That website provides an on-line search utility (SSN required) as well as a help button link that provides information on where requests for information can be sent (no SSN required) to determine whether a particular individual is on active duty in the military. Alternatively, a sworn statement or declaration from the Defendants or someone in a position to know the military status of the individuals could be accepted. Other factors, such as the age of Defendants if beyond the age for service can be considered.

Accordingly, for the reasons stated above, the Clerk declines to enter default against Defendants Dipankar Ben Banerjee and Moushumi Banerjee at this time. Plaintiff may file a renewed request for entry of default against those Defendants pursuant to FRCP 55(a) when proper affidavits of military service have been prepared.

The Clerk will enter default against Defendants Goldmine Hospitality, LLC, and Southern Hospitality Services, LLC. These Defendants are not subject to military service. Accordingly, default is hereby entered against Goldmine Hospitality, LLC, and Southern Hospitality Services, LLC, pursuant to Federal Rule of Civil Procedure 55(a).

s/ Keith Throckmorton

Keith Throckmorton
Clerk of Court